STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
-vs-	:	
Commonwealth Edison Company	:	
	:	**10-0537**
Reconciliation of revenues collected	:	
under Rider EDA with the actual costs	:	
associated with energy efficiency and	:	
demand response programs.	:	

PROPOSED ORDER

June 15, 2012

TABLE OF CONTENTS

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By the Commission:

I. Procedural History

On August 31, 2010, Commonwealth Edison Company ("ComEd" or "Company") filed with the Illinois Commerce Commission's ("Commission") Chief Clerk, its Annual Report concerning the operation of its Energy Efficiency Demand Response and Adjustment Rider, Rider EDA, for the period beginning June 1, 2009 through May 31, 2010 ("Annual Report"). Also included with ComEd's Annual Report was supporting direct testimony. (ComEd Correspondence Dated August 31, 2010)

On September 9, 2010, the Commission initiated this proceeding for ComEd to present evidence to show the reconciliation of revenues collected under its Rider EDA with costs prudently incurred in connection with proper energy efficiency and demand response activities as defined in the tariffs of the Company for the period June 2009 through May 2010. (Order Commencing Reconciliation Proceeding, September 9, 2011, pp. 1 and 3)

On September 14, 2010, ComEd filed the previously mentioned Annual Report and supporting testimony in this proceeding. (Docket Sheet, September 14, 2010) On October 6, 2010 an initial status hearing was held in this matter. The matter was continued to February 3, 2011 in order for the parties to serve data requests, receive information and to develop their positions. (Tr., October 6, 2010, p. 3) The matter was continued several more times (Notices of Continuance Dated, February 7, 2011; Id., May 2, 2011; Id., June 1, 2011 and Id., July 14, 2011) until a status hearing held on September 21, 2011. (Tr., September 21, 2011)

Prior to the September 21, 2011 status hearing, Staff filed its direct testimony. (Tr., September 21, 2011, p. 8) Staff filed the direct testimony of Scott Tolsdorf (Staff Ex. 1.0) and Jennifer L. Hinman (Staff Ex. 2.0). At the status hearing on September 21, 2011, counsel for the Company informed the parties and Administrative Law Judge

("ALJ") that the Company intended on filing a motion to strike portions of the direct testimony of Staff witness Hinman. (Tr., September 21, 2011, p. 9) The parties agreed to a schedule for the filing of ComEd's motion to Strike, responses and replies. (Id.) ComEd's motion was filed September 28, 2011, a Staff response was filed October 20, 2011, a ComEd Reply was filed November 20, 2011 and an ALJ ruling was issued November 29, 2011. A corrected ALJ Ruling was issued on December 7, 2011.

ComEd's motion was granted in part and denied in part. Generally as a result of the ALJ's ruling subject to the specifics set forth in the ALJ's ruling, three of Staff witness Hinman's four recommendations and supporting testimony were stricken. (ALJ Ruling, December 7, 2011) Another status hearing was held on December 6, 2011 at which time the parties agreed to further scheduling in this matter and the matter was continued to January 12, 2012. (Tr., December, 6, 2011, p. 21) A status hearing was held on January 12, 2012, and the matter was subsequently continued by the ALJ to February 22, 2012. (Notice of Continuance, January 12, 2012; Tr., January 12, 2012) At the status hearing on February 22, 2012, the ALJ with agreement of the parties set a schedule for the filing of Staff and Intervenor rebuttal testimony and Company surrebuttal testimony. (Tr., February 22, 2012, p. 33) On March 22, 2012 Staff filed its rebuttal testimony (Rebuttal Testimony of Scott Tolsdorf, Staff Ex. 3.0 and Rebuttal Testimony of Jennifer L. Hinman, Staff Ex. 4.0), and the Company filed surrebuttal testimony (Surrebuttal Testimony of Michael S. Brandt and Martin G. Fruehe) on April 19, 2012.

An evidentiary hearing was held in this matter on May 10, 2012, at which time Staff's prefiled direct and rebuttal testimony (with Staff's Ex. 2.0 subject to the ALJ's corrected ruling of December 7, 2011) were all admitted into evidence. The Company's prefiled testimony and exhibits (Company Exhibits 1 through 6) were also admitted into evidence.

Also at the evidentiary hearing on May 10, 2012, at the request of Staff, the ALJ took administrative notice of ComEd's Rider EDA. Staff Cross Exhibits 1 and 2 (the Company's 2009 and 2010 Annual Incentive Plan and Staff Cross Exhibit 3 (Company's supplemental response to Staff Data Request ST 2.04 and Attachment Public) were also admitted into evidence by the ALJ. (Tr., May 10, 2012, pp. 26-27)

The ALJ marked the record heard and taken and a briefing schedule was set.

II. Overview of ComEd's Energy Efficiency and Demand Response Plan and Rider EDA

Mr. Brandt testified regarding: (i) ComEd's 2008-2010 Energy Efficiency and Demand Response Plan ("Plan"); (ii) the various energy efficiency and demand response measures ComEd implemented for Plan Year 2 and ComEd's accounting for Plan Year 2 expenditures; (iii) ComEd's process for the selection and the oversight of contractors to ensure costs are reasonable; (iv) the reasonableness and prudence of Plan Year 2's measures and costs; and (v) the reconciliation of revenues collected under Rider EDA with the costs incurred by ComEd associated with the implementation of the energy efficiency and demand response measures approved in the Plan, as recorded on ComEd's books, for the period beginning June 1, 2009 and extending through May 31, 2010. ComEd Ex. 2.0 at 1. In sum, during Plan Year 2 ComEd spent $15.7 million less than projected while also exceeding the ComEd portion of the energy savings goal by an estimated 14%. *Id*. at 2.

In addition to implementing the programs set forth in its Plan, ComEd worked closely with the Stakeholder Advisory Group ("SAG") throughout the Plan Year on many matters, including program evaluation issues, plan development and review, portfolio and program status, portfolio and program design changes, demand response programs and market potential studies. ComEd Ex. 2.0 at 2.

Summary of ComEd's Energy Efficiency and Demand Response Plan's Energy Savings Goals and Spending Screen

Mr. Brandt stated that on November 15, 2007 ComEd filed its 2008-2010 Energy Efficiency and Demand Response Plan ("Plan") pursuant to the requirements imposed by Section 8-103 of the Public Utilities Act ("Act"). The core of ComEd's Plan is a portfolio of energy efficiency and demand response measures designed to meet the statutory energy savings goals within the spending screens in each of the three Plan Years. For Plan Year 2, Section 8-103(b) required that ComEd "implement cost-effective energy efficiency measures" to achieve an annual energy savings goal of 0.4% of energy delivered during Plan Year 2 (220 ILCS 5/8-103(b)). Section 8-103(c) mandated that ComEd "implement cost-effective demand response measures to reduce peak demand by 0.1% over the prior year for eligible retail customers, as defined in Section 16-111.5 of this Act." 220 ILCS 5/8-103(c); ComEd Ex. 2.0 at 5; ComEd IBat 3. Section 8-103(d) established a "spending screen," which provided that, for Plan Year 2, ComEd "reduce the amount of energy efficiency and demand-response measures implemented … by an amount necessary to limit the estimated average increase in the amounts paid by retail customers in connection with electric service due to the cost of those measures to … the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2008 or 1% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007." 220 ILCS 5/8-103(d); ComEd Ex. 2.0 at 5; ComEd IBat 3. Applying these goals to Plan Year 2, ComEd's Plan calculated a statutory energy efficiency savings goal of 393,691 megawatt hours ("MWhs"), a demand response savings goal of 11.1 megawatts ("MWs"), and a spending screen of $81.6 million. ComEd IBat 3.

According to Mr. Brandt, ComEd was responsible for implementing all of the demand response measures in the Plan; however, under Section 8-103(e), ComEd shared responsibility for the implementation of energy efficiency measures with the Department of Commerce and Economic Opportunity ("DCEO"). The statute provides that ComEd should implement 75% of the energy efficiency measures and DCEO was responsible for implementing the remaining 25%. 220 ILCS 5/8-103(e); ComEd IBat 3-4. Mr. Brandt explained that ComEd and DCEO calculated the split by considering the nature of the programs and allocating the amount under the statutory spending screen to correspond with the statutory percentage. He testified that as a result, of the 393,691 MWh energy efficiency saving goal, ComEd was responsible for 312,339 MWhs and DCEO was responsible for 81,352 MWhs. ComEd Ex. 2.0 at 6.

In its February 6, 2008 order approving ComEd's Plan, the Commission approved the calculations of the energy efficiency savings goals, the spending screen, and the split with DCEO. *See Commonwealth Edison Co*., ICC Docket No. 07-0540, Final Order (Feb. 6, 2008); ComEd Ex. 2.0 at 6; ComEd IBat 4. Mr. Brandt further testified that pursuant to the Commission's Order, ComEd recalculated the spending screen to reflect the most recent year's revenue. The recalculation resulted in an adjusted spending screen of $79.3 million, which was $2.3 million less than the spending screen originally calculated in the Plan for Plan Year 2. ComEd Ex. 2.0 at 6-7; ComEd IBat 4.

Overview of Energy Efficiency and Demand Response Measures Implemented During Plan Year 2 and Plan Year 2 Incremental Costs

Mr. Brandt described the individual energy efficiency measures that ComEd implemented in Plan Year 2 to achieve its energy savings goals. He explained that the individual energy efficiency measures were organized into an overall portfolio consisting of a variety of programs. The basic building block of the portfolio is the energy efficiency measure – an individual technology or service that reduces the amount of electricity used when installed or performed. An energy efficiency program or program element consists of the bundling of one or more of these energy efficiency measures into an entire program concept, which includes program delivery mechanisms, incentive rebate levels, and marketing approaches. The measure is one component of the program element. Mr. Brandt testified that a program represents a bundle of program elements. ComEd Ex. 2.0 at 7.

Mr. Brandt testified that the portfolio was designed to blend together the program elements under two broad solutions-based programs for Residential and Business customers – "Smart Ideas for Your Home" and "Smart Ideas for Your Business." ComEd's final Plan Year 2 portfolio consisted of a set of energy efficiency program elements that included six residential program elements and three commercial and industrial ("C&I") program elements. ComEd Ex. 2.0 at 7.

As Mr. Brandt explained, the "Smart Ideas for Your Home" program elements were technology based, focused on simple customer actions and emphasized customer education with the goal of moving residential customers to comprehensive "whole home" solutions. They included the Residential Lighting Program element, the Appliance Recycling Program element, the Residential Multi-Family "All-Electric" Sweep Program element, the Central Air Conditioner Energy Services ("CACES") Program element, the Single Family Home Performance Program element, and the Air Conditioning ("AC") Cycling Program element. ComEd Ex. 2.0 at 8-11. Mr. Brandt further testified that the "Smart Ideas for Your Business" program elements offered a complimentary set of energy efficiency options to C&I customers during Plan Year 2. These included the Prescriptive Incentive Program element, the Custom Incentive

Program element, the Retrocommissioning Program element, and the C&I New Construction Program element. ComEd Ex. 2.0 at 11-12.

Mr. Brandt also testified about the incremental costs ComEd incurred related to implementing energy efficiency and demand response measures during Plan Year 2. He explained that the incremental costs included costs for: (i) residential programs, (ii) C&I programs, (iii) the demand response program, (iv) education and market transformation activities, (v) DCEO costs, and (vi) portfolio-level costs. ComEd Ex. 2.0 at 12. Mr. Brandt described the incremental costs associated with each of the program elements ComEd implemented during Plan Year 2 as follows: Residential Lighting – $11,691,347; Appliance Recycling – $3,646,603; Residential Multi-Family "All-Electric" Sweep – $822,397; Residential HVAC Diagnostic & Tune-Up and Residential New HVAC with Quality Installation – $2,919,925; Single-Family Home Performance – $373,341; AC Cycling – $819,145 (net of PJM Interconnection credits of $223,470); C&I Prescriptive/Custom – $20,844,585; C&I Retrocommissioning – $2,036,491; and C&I New Construction – $578,798. ComEd Ex. 2.0 at 13.

According to Mr. Brandt, ComEd also undertook a variety of education and market transformation activities that were designed to promote energy efficiency education awareness of ComEd's Plan. These activities included: (i) providing Energy Insights Online and Energy Data Services for business customers, (ii) participating in trade ally events to promote the programs, (iii) conducting general marketing activities, and (iv) operating two pilot programs – ComEd Community Energy Challenge and Positive Energy Home Energy Report – whose costs were split with the Research and Development budget. Mr. Brandt testified that the incremental costs associated with these activities during Plan Year 2 were $1,649,418. *Id*.

Mr. Brandt also explained that because ComEd collects 100% of the revenue, it must reimburse DCEO for its incremental costs relating to the energy efficient measures DCEO implemented. As DCEO executed grants or contracts for energy efficiency measures during Plan Year 2, it would forward to ComEd an invoice including the necessary supporting documentation for these grants and contracts. ComEd reviewed the invoice documentation to ensure completeness and then released the money to DCEO. Mr. Brandt explained that this process provided oversight and ensured that the money was being allocated towards energy efficiency measures. ComEd reimbursed DCEO $11,471,616 for its incremental costs. ComEd Ex. 2.0 at 14.

Mr. Brandt testified that the Plan Year 2 portfolio-level costs included the operation and administration costs of the Plan and consisted of three categories – portfolio administration costs, measurements and verification costs, research and development, and emerging technology costs. The portfolio administration costs included costs associated with: (i) internal ComEd labor for new, incremental positions added to implement ComEd's Plan, (ii) market research and baseline studies across all customer classes, and (iii) implementation and management of the tracking system. According to Mr. Brandt, during Plan Year 2 the incremental costs were $3,285,956. The measurement and verification costs related to expenses incurred in retaining a consultant to conduct the required independent evaluation function for the portfolio. Mr.

Brandt explained that the hiring of the consultant was subject to the Commission Staff's approval. According to Mr. Brandt, the incremental costs incurred during Plan Year 2 for measurement and verification were $2,377,679. Mr. Brandt stated that research and development and emerging technologies costs could be divided into three groups: (i) pilot programs, (ii) energy efficiency industry memberships, and (iii) technology research. He testified that during Plan Year 2 these incremental costs totaled $1,026,174. ComEd Ex. 2.0 at 15.

Summarizing the PY2 incremental costs, Mr. Brandt testified that the actual incremental costs ComEd incurred related to the implementation of the Plan during Plan Year 2 totaled $63,543,474. *See* ComEd Ex. 1.0; ComEd Ex. 2.0 at 16. He explained that ComEd accounts for the expenditures associated with the measures by assigning each program and activity a unique project number within ComEd's accounting system. He testified that the Plan Year 2 forecast of expenditures associated with the measures was $79,256,000 (ComEd Ex. 2.1) and actual expenditures for Plan Year 2 were $63,543,474. Mr. Brandt stated that the primary reasons for the difference between the forecast and actual expenditures are (i) ComEd's success in managing the C&I programs, and (ii) DCEO costs were less than projected. ComEd Ex. 2.0 at 16. However, actual revenues collected for Plan Year 2 were $70,546,051. ComEd Ex. 1.0.

A. Contractor Selection and Oversight to Ensure Reasonable and Prudent Costs

Mr. Brandt also described the types of activities for which ComEd retains third-party consultants and contractors. Specifically, these roles include: (i) program implementation, (ii) program evaluation, (iii) market research, and (iv) program tracking system development and implementation. Mr. Brandt explained that to ensure the consultant and contractor costs are reasonable and prudent, ComEd uses a standard competitive solicitation process administered by its affiliate, Exelon Business Services Company ("BSC"). According to Mr. Brandt, ComEd, in conjunction with BSC, developed Request for Proposals ("RFP") documents that detailed the requirements for the programs. A list of qualified vendors was created for the programs and projects based on numerous sources and then the RFPs were sent to the vendors for bid. For each RFP, ComEd and BSC put together an internal team to review each bid based on specific qualifications, including previous experience and cost. In all cases, contract negotiations were conducted by the BSC procurement team and followed standard procedures. Mr. Brandt explained that in the case of the evaluation contract, Staff was also offered the opportunity to review all bids, participate in any vendor interviews, and have sign-off on the vendor selection. In addition, SAG members were kept apprised of all steps in the process and had the opportunity to comment on the process at any time. ComEd Ex. 2.0 at 16-17.

Mr. Brandt further testified that during the contract implementation phase, ComEd's program managers review the invoices submitted by the consultants and contractors to ensure the invoices reflect only those charges that relate to work that has been authorized. He explained that to assist its review of expenditures, ComEd requires that invoices include detailed backup documentation. ComEd Ex. 2.0 at 17.

Mr. Brandt also identified the primary consultants and contractors that worked on the project, including those contractors who were responsible for implementing the programs. ComEd Ex. 2.0 at 17-18.

B. Reconciliations under Rider EDA

1. Overview of Operation of Rider EDA

Mr. Brandt testified that Rider EDA prescribes the method of computing the charges that reflect the recovery of incremental costs associated with energy efficiency and demand response measures. He explained that the purpose and intent of Rider EDA is to pass through to retail customers the incremental costs incurred by ComEd associated with the measures, without markup or profit. Each May, ComEd files with the Commission an Informational Filing for Energy Efficiency and Demand Response Adjustments ("Informational Filing"), which includes its projected costs for measures to be implemented during the next Plan Year and the calculations necessary to determine the Rider EDA charges for the coming Plan Year for each of the three customer classes identified in the rider. Rider EDA provides that the Rider EDA charges may be revised by ComEd during a given Plan Year if ComEd determines that, "a revised EDA results in a better match between EDA revenues and costs." ComEd Ex. 2.0 at 18; ComEd IBat 4.

Mr. Brandt further explained that a key component of the Rider EDA calculation is the Automatic Reconciliation Factor ("ARF"), which Rider EDA defines as "equal to the cumulative over collection or under collection from applicable retail customers, pursuant to plans approved by the ICC, resulting from the application of then applicable EDAs through the end of the following May monthly billing period." He explained that because the Plan Year 2 ARF reflected an over-collection of Plan Year 1 Rider EDA revenues by approximately \$3.9 million, its application during Plan Year 2 decreased the amount that would be recovered from retail customers by approximately \$3.9 million. *See* ComEd Ex. 1.0; ComEd Ex. 2.0 at 18-19; Rider EDA, ILL. C. C. No. 10, 1st Revised Sheet No. 248; ComEd IBat 4-5.

Mr. Brandt also testified that all incremental costs associated with the measures were recoverable under Rider EDA. ComEd Ex. 2.0 at 19; ComEd IBat 5. He stated that Rider EDA defines "Energy Efficiency and Demand Response Measures" ("Measures") as "activities and programs that are developed, implemented, or administered by or for the Company, or the Department of Commerce and Electric Opportunity (DCEO), that are related to energy efficiency and demand response plans approved by the ICC." Rider EDA defines "incremental costs" as:

> [C]osts incurred after August 28, 2007 by the Company or recovered on behalf of DCEO in association with the Measures and include, but are not limited to (a) fees, charges, billings, or assessments related to the Measures; (b) costs or expenses associated with equipment, devices, or services that are purchased, provided, installed, operated, maintained, or monitored for the Measures; (c) the revenue requirement equivalent of the

> return of and on a capital investment associated with a Measure, based on the most recent rate of return approved by the ICC; and (d) all legal and consultative costs associated with the Measures.
>
> Incremental Costs also include incremental expenses for wages, salaries, and benefits of Company employees, including direct and indirect incremental costs associated with such Company employees, who are hired for positions that are specifically related to the Measures and that were created after August 28, 2007. Incremental Costs may not include any expenses for wages, salaries, and benefits of Company employees in positions that are related to the Measures, employed either before or after August 28, 2007, that are otherwise recovered under other effective tariffs.

Rider EDA, ILL. C. C. No. 10, 1st Revised Sheet No. 246.

2. Plan Year 2 Reconciliation

Mr. Brandt explained that Exhibits 2.1 and 2.2 to his Direct Testimony showed how ComEd calculated the Rider EDA charges for the reconciliation period. Mr. Brandt explained that for each of the three customer classes, the following information was included in the calculations of Rider EDA for Plan Year 2: (1) the Plan Year 2 projected incremental costs associated with the measures, (2) the Plan Year 2 ARFs (over-collection of Plan Year 1 Rider EDA revenues), (3) the Total Dollar Amount to be recovered through the rider, (4) the Projected Energy to be Delivered to each of the three classes of Retail Customers (in kWhs), (5) the Uncollectible Factor, and (6) the Plan Year 2 Rider EDA Adjustments, rounded to the nearest thousandth of a cent. ComEd Ex. 2.0 at 20-21.

Moreover, Mr. Brandt explained that the methodology used to calculate the Rider EDA charges, described in Rider EDA, takes into account the Reimbursements of Incremental Costs (“RIC”), which is equal to reimbursement funds from any source other than the application of the Rider EDA charges to the bills of retail customers. If the RIC is greater than zero, then the amount of the RIC is subtracted from the projected incremental costs to obtain the total amount to be charged through the rider. Mr. Brandt testified that in Plan Year 2 the value of the RIC was zero. Although ComEd received credits of $223,470 from PJM Interconnection for the AC Cycling Program element, these credits were directly applied to the total expenses associated with the AC Cycling Program element. The total AC Cycling costs were $1,042,615. Subtracting $223,470 from $1,042,615 results in the net program costs of $819,145. ComEd Ex. 2.0 at 21-22.

Mr. Brandt also explained how ComEd determined the projected energy to be delivered during Plan Year 2 to retail customers in the Rider EDA calculations, stating that ComEd obtained a forecast of the projected energy to be delivered to its retail customers in Plan Year 2 from its Load Forecasting Division, which is part of ComEd’s Financial Planning and Analysis department. He also testified as to how ComEd determined the Uncollectible Factor. He explained that Rider EDA provides that the Uncollectible Factor is "equal to the uncollectible factor listed in Rider UF – Uncollectible Factors (Rider UF) for retail customers taking service under Rate BESH – Basic Electric Service Hourly Pricing (Rate BESH)." Mr. Brandt stated that for Plan Year 2 EDA charges, the Rider UF uncollectible factor for retail customers taking service under Rate BESH was 1.0061. ComEd Ex. 2.0 at 22.

Mr. Brandt testified that as reflected in ComEd Ex. 2.2, however, the Rider EDA Uncollectible Factor was changed from 1.0061 to 1.0 consistent with the Commission's order in Docket No. 09-0433. Mr. Brandt explained that as a result, new Plan Year 2 EDA charges took effect with the April 2010 monthly billing period through the May 2010 monthly billing period. ComEd Ex. 2.2; ComEd Ex. 2.0 at 22-23.

According to Mr. Brandt, the Rider EDA charges for each customer group were determined by dividing the projected incremental costs associated with the measures for Plan Year 2 for that customer group (less the ARF) by the projected energy to be delivered to that customer group in Plan Year 2, multiplying that figure by the Uncollectible Factor, and rounding to the nearest thousandth of a cent. He explained that, as shown in ComEd's Informational Filing, the Rider EDA charges appearing on retail customers' bills beginning June 2009 and extending through the March 2010 billing period were as follows: Residential (EDA-R) – 0.089 cents per kWh; Small C&I (EDA-NS) – 0.073 cents per kWh; and Large C&I (EDA-NL) – 0.90 cents per kWh. ComEd Ex. 2.1; ComEd Ex. 2.0 at 23. He further explained that, as shown on ComEd's Tariff Revisions and Informational Sheet Revisions Pursuant to the Illinois Commerce Commission Order in Docket No. 09-0433, submitted to the Commission on February 8, 2010, the Rider EDA charges appearing on retail customers' bills beginning with the April 2010 monthly billing period and extending through the May 2010 monthly billing period were as follows: Residential (EDA-R) – 0.088 cents per kWh; Small C&I (EDA-NS) – 0.073 cents per kWh; and Large C&I (EDA-NL) – 0.089 cents per kWh. ComEd Ex. 2.2; ComEd Ex. 2.0 at 23. The relevant Rider EDA charge was then applied to each kWh of electricity delivered to ComEd's retail customers, and the total charge or credit applied in accordance with the provisions of Rider EDA is separately stated on each retail customer's monthly bill as "Energy Efficiency Programs." ComEd Ex. 2.0 at 24.

Mr. Brandt testified that ComEd filed an annual report, ComEd Ex. 1.0, with the Commission, consistent with Rider EDA, which requires that the annual report summarize the operation of Rider EDA and compare actual incremental cost recovery from customers in Plan Year 2 with the incremental costs incurred in accordance with the provisions of Rider EDA for Plan Year 2. Mr. Brandt testified that the first page of the Annual Report provides a summary of the incremental costs incurred and recovered through Rider EDA during Plan Year 2, as well as a cumulative figure from Rider EDA's inception through May 31, 2010. The second page shows the amounts recovered through rates by class of retail customers to whose bill the Rider EDA charges were applied in Plan Year 2, as well as cumulative figures from Rider EDA's inception through May 31, 2010. Finally, the third page illustrates the incremental costs incurred by ComEd and associated with the measures during Plan Year 2. The costs are broken down by program and activities, and then by customer group. ComEd Ex. 2.0 at 24.

With respect to the calculation of the ARF for Plan Year 2 activity, Mr. Brandt explained that, for the Plan Year 2 reconciliation period, each ARF is equal to the amount of the under or over collection of incremental costs resulting from the application of the Rider EDA adjustment to retail customers' bills. According to Mr. Brandt, the difference between the incremental costs incurred for each of the three customer classes and the amount recovered in rates from each of the customer classes resulted in an under-collection for the residential class of $1,448,531, and an over-collection for the small C&I and large C&I classes of $4,130,993 and $8,223,131, respectively. *See* ComEd Ex. 1.0; ComEd Ex. 2.0 at 25.

Mr. Brandt also testified that ComEd made changes to Rider EDA charges for Plan Year 3 based on two factors. First, under ComEd's Plan, both the energy savings goal and spending screen increased substantially for Plan Year 3, with the spending screen increasing to $120.7 million. As a result, the Rider EDA charges had to be recalculated for all three customer classes using the same methodology employed during Plan Year 2. *See* ComEd Ex. 2.3. Second, as shown in ComEd's Revised Informational Filing for Energy Efficiency and Demand Response Adjustment, sent to the Commission on May 19, 2010 for charges to be effective beginning with the June 2010 monthly billing period and extending through the May 2011 billing period, ComEd estimated an over-collection at that time for each of the three customer classes: $1,334,850 for Residential; $1,294,400 for Small C&I; and $1,415,750 for Large C&I. *See Id*. Mr. Brandt explained that the estimated amount of over-collection was subtracted from the estimated incremental costs for each customer class for Plan Year 3 to determine the total amount to be recovered through the rider from each class. ComEd Ex. 2.0 at 25. Mr. Brandt further explained that following the May 19, 2010 filing and the close of Plan Year 2 on May 31, 2010, ComEd began finalizing the Plan Year 2 figures. During that process, ComEd learned that DCEO materially under-spent during Plan Year 2, which increased the over-collection for Plan Year 2 by approximately $6 million. Mr. Brandt testified that as a result, in September 2010, ComEd filed a revised informational report that updated the EDA charges to reflect the $6 million over-collection, which became effective in the October 2010 billing period. ComEd Ex. 2.0 at 25-26.

Mr. Brandt further testified that as required by Rider EDA, the Annual Report included "the results of an internal audit verified by an officer of the Company." *See* ComEd Ex. 2.4. He explained that consistent with Rider EDA, Exelon's internal audit team performed testing to ensure that: (1) expenses recovered through the rider were associated with the energy efficiency programs and were not recovered through other approved tariffs; (2) revenue obtained through the rider was correctly stated; (3) funds other than those collected through the rider were identified and reflected in the EDA and ARF; and (4) customer bills accurately reflected the appropriate rate. According to Mr. Brandt, the audit found that the control activities were effective at mitigating the financial risks mentioned above and no issues were discovered as a result of the above tests. ComEd Ex. 2.0 at 26.

III. Uncontested Issues

A. Annual Reporting of Budget to Actual Comparison

1. ComEd's Position

Staff proposed that the Commission direct ComEd to include in its next Rider EDA Annual Report a comparison of the energy efficiency ("EE") Plan Year budgets versus actual EE expenditures by program-level and portfolio-level cost categories consistent with those articulated in ComEd energy efficiency plans. Staff Ex. 2.0 at 6-7. In response to Staff's proposal, ComEd agreed to provide the comparison "in a form that is substantially similar to the one [Staff] requests" while explaining that it does not manage to individual cost categories for each program, but rather affords the program manager flexibility to manage the total budget. ComEd Ex. 3.0 at 2. ComEd noted that for this reason it must retain the flexibility to identify the most appropriate individual cost category or categories for the various expenses, especially in cases where an expense cannot be clearly defined by one cost category, but rather goes across two or more categories. *Id*. Because Staff did not take issue with this clarification, ComEd believes it has reached agreement with Staff on this issue and requests that the Commission adopt Staff's recommendation as modified by ComEd.

2. Staff's Position

In her direct testimony, Staff witness Hinman made one of several recommendations which she believed would help ensure the Commission would have information necessary to evaluate ComEd's expenditures in future Rider EDA reconciliation proceedings. In particular Ms. Hinman recommended:

> the Commission direct the Company to include in its Rider EDA Annual Report filed by August 31st of each year, a comparison of its EE Plan Year budgets versus actual EE expenditures by program-level and portfolio-level cost categories consistent with that presented in its EE Plan approved by the Commission. (ComEd Rider EDA, ILL. C. C. No. 10, Original Sheet No. 248.1). I recommend the Commission direct the Company to consistently and accurately classify, track, and report EE expenditures in its Rider EDA Annual Report by cost categories consistent with those proposed in the Company's EE Plan.

(Staff Ex. 2.0, pp. 6-7)

Ms. Hinman went on to explain that:

> [c]urrently, the Company reports to the Commission its EE expenses in a different format than that provided in past EE Plan dockets. (See, e.g., ComEd PY3 Rider EDA Annual Report at 4; Staff Ex. 135 2.1 at 36). To better facilitate the review process in EE reconciliation proceedings and to aid in reviewing the

> reasonableness of proposed costs in future EE Plan proceedings, the Company should report Rider EDA expenses in reconciliation proceedings in the same format as it proposed the costs to the Commission in EE Plan approval proceedings.

(Id., p. 8)

Ms. Hinman further explained that:

> [t]he Company's adherence to this recommendation is needed on a continuing basis in order to assist Staff in providing recommendations to the Commission and for the Commission to be able to efficiently evaluate the actions of the Company in execution of the Commission-approved EE Plans.

(Id., p. 9)

Ms. Hinman concluded that:

> In future Rider EDA reconciliation proceedings, the Company should provide invoices and supporting documentation for any requested cost category by EE program and it should substantiate that these expenses were reasonably and prudently incurred. I recommend the Commission direct the Company to report in its Rider EDA Annual Report filed by August 31st of each year for the annual reconciliation proceeding, the Company's EE expenditures by cost categories consistent with those provided in the Company's EE Plan. (ComEd EE Plan 1, Appendix A, Appendix D; ComEd EE Plan 2 at 14, Appendix E; Staff Ex. 2.1 at 1 – 6, 8, 12 – 22, 24). Further, I recommend the Commission direct the Company to include in its Rider EDA Annual Report a comparison of the EE Plan Year budgets versus actual EE expenditures by portfolio-level cost category and by program-level cost categories for each program consistent with those articulated in the Company's EE Plan approved by the Commission. (Id.).

(Id., pp. 13-14)

Company witness Brandt indicated that "ComEd agrees to provide the comparison described by Ms. Hinman in a form that is substantially similar to the one she requests." (ComEd Ex. 3.0, p. 2) Mr. Brandt added that:

> [b]ecause ComEd does not manage to the individual cost categories for each program, but allows the program manager the flexibility to manage to the total budget, ComEd will make every effort to report expenses in the same cost categories provided in the Plan. However, ComEd must retain the flexibility to identify the most appropriate individual cost category or categories for the various expenses, especially in cases where an expense cannot be

> clearly defined by one cost category, but rather goes across two or more categories.

(Id.)

While the Company has agreed to provide the comparison requested by Ms. Hinman, Ms. Hinman testified that the Commission's order should include language directing the Company to include in its Rider EDA Annual Report filed by August 31 of each year, a comparison of its EE Plan Year budget versus actual EE expenditures by program level and portfolio-level cost categories consistent with that presented in ComEd's EE Plan approved by the Commission. (Staff Ex. 4.0, p. 4 and 6) Ms. Hinman added in her rebuttal testimony that the "Company's direct testimony in reconciliation proceedings should justify significant shifts in expenditures in comparison to those forecasted in its approved EE Plan." (Id., p. 6) The Company in its surrebuttal testimony does not address this point specifically, therefore, Staff assumes that the Company does not take issue with that recommendation as well.

Given the above, Ms. Hinman's Recommendation 1 along with the accompanying recommendation that the "Company's direct testimony in reconciliation proceedings should justify significant shifts in expenditures in comparison to those forecasted in its approved EE Plan" (Id.) appear to be uncontested. For all the above reasons, Staff recommends that the Commission order the Company to: (1) provide in its Annual Rider EDA Report a comparison of its energy efficiency Plan Year budgets versus actual energy efficiency expenditures by program-level and portfolio-level cost categories consistent with that presented in its energy efficiency Plan approved by the Commission; (2) consistently and accurately classify, track, and report energy efficiency expenditures in its Rider EDA Annual Report by cost categories consistent with those proposed in the Company's energy efficiency Plan; (3) provide invoices and supporting documentation for any requested cost category by energy efficiency program and it should substantiate that these expenses were reasonably and prudently incurred in future Rider EDA reconciliation proceedings; and (4) include in its direct testimony in Rider EDA reconciliation proceedings justification for significant shifts in expenditures in comparison to those forecasted in its approved energy efficiency Plan.

3. Commission Analysis and Conclusions

The Commission find Staff's proposal, as modified by ComEd's clarification, reasonable. It is therefore approved.

B. Filing of Annual Evaluation Reports

1. ComEd's Position

Staff recommended that the annual evaluation reports filed in the annual evaluation dockets also be filed in the reconciliation dockets, and that ComEd also file the quarterly status reports it provides to the SAG in the original, closed Plan docket to which the quarterly status reports relate. Staff Ex. 4.0 at 1-2, 4-5. Mr. Brandt responded that ComEd would file the evaluation reports in the reconciliation docket for the same Plan Year. ComEd Ex. 3.0 at 2. For example, the Plan Year 2 evaluation reports would be filed in the Plan Year 2 reconciliation docket once they become available. *Id*. ComEd also agreed to file the quarterly status reports as requested by Staff. ComEd further noted that the filing of these reports was for informational purposes only and as a courtesy to Staff, and that it was not commenting at this time on whether these reports are relevant to this docket or any docket. According to ComEd, because Staff did not object to ComEd's description of the agreement, ComEd believes they have reached agreement.

2. Staff's Position

Staff witness Hinman also made a recommendation that ComEd file the independent evaluation reports, completed pursuant to Section 8-103(f)(7) of the Illinois Public Utilities Act ("Act"), in its Rider EDA reconciliation proceedings. (220 ILCS 5/8-103(f)(7)) Ms. Hinman explained that those reports evaluate portfolio administrator performance and also provide an estimate of whether the Company implemented its portfolio in a cost-effective manner and thus the reports examine whether the Company's expenditures are providing net benefits to ratepayers. (Staff Ex. 4.0, p. 5)

The Company in its rebuttal testimony and surrebuttal testimony indicated that it agrees to file the reports in the requested dockets as a courtesy to Staff (Plan Year 2 evaluation reports would be filed in the Plan Year 2 reconciliation docket) for information purposes only once the reports become available. (ComEd Ex 3.0, pp. 2-3; ComEd Ex 5.0, p. 3) Company witness Brandt further added that he was not commenting on whether the reports are relevant to this proceeding. (ComEd Ex. 3.0, p. 3)

Ms. Hinman in rebuttal responded that putting aside the issue of whether the reports are relevant, she still recommended that the Commission include language in its final order for this proceeding that ComEd be directed to file the independent evaluation reports in the Annual Rider EDA reconciliation proceedings. (Staff Ex. 4.0, p. 5) It is Staff's position that the relevance of the reports can be addressed in the individual reconciliation proceedings. In its surrebuttal testimony, ComEd continued to take the position that it would file the reports in the reconciliation dockets. (ComEd Ex. 5.0, p. 3)

This issue appears to be uncontested. Therefore, Staff recommends that the Commission order the Company to file the independent evaluation reports completed pursuant to 220 ILCS 5/8-103(f)(7) in the Rider EDA reconciliation dockets.

3. Commission Analysis and Conclusions

The Commission approves the agreement reached between ComEd and Staff. ComEd will file the following, for informational purposes only: (i) the evaluation reports for a given Plan Year in the reconciliation docket for the same Plan Year, and (ii) the quarterly status reports provided to the SAG in the original, closed Plan docket to which the quarterly status reports relate.

C. Rider EDA Revenue Adjustment

1. ComEd's Position

ComEd observed that although Staff initially proposed a revenue adjustment to disallow $189,020, it withdrew that proposal in its rebuttal testimony. Staff Ex. 3.0 at 1; see also Staff Ex. 1.3. ComEd noted that because Staff has withdrawn its proposed revenue adjustment, there is nothing for the Commission to decide on this issue.

2. Staff's Position

In his direct testimony, Staff witness Tolsdorf recommended an adjustment to restate the revenue generated through Rider EDA based upon the number of billed kWh. (Staff Ex. 1.0, p. 5) Mr. Tolsdorf recommended the adjustment because his calculated revenue did not reconcile to the revenue reported by the Company. (Id.) In its rebuttal testimony, the Company took issue with Mr. Tolsdorf's adjustment. (ComEd Ex. 3.0, p. 3) After further consideration of the issue and in the interest of limiting the number of contested issues, Mr. Tolsdorf withdrew his adjustment. (Staff Ex. 3.0, p. 1) This issue is uncontested.

3. Commission Analysis and Conclusions

We find that because Staff has withdrawn its proposed disallowance, there is nothing for the Commission to decide.

D. Removal of Travel Expense

1. ComEd's Position

Mr. Brandt testified that Staff identified one invoice that shows a travel expense of $6 for an alcoholic beverage, which Staff recommends ComEd withdraw as a reconciliation expense. Mr. Brandt explained that ComEd has reviewed this expense, and in order to narrow the issues in this case, ComEd has agreed to remove the expense from the costs recovered through Rider EDA in this reconciliation docket. ComEd Ex. 3.0 at 6.

2. Staff's Position

In his direct testimony, Staff witness Tolsdorf noted something unusual came to his attention concerning an invoice submitted by the Company in response to Staff data requests with respect to the Company's Rider EDA charges. Mr. Tolsdorf noted that there was a purchase of an alcoholic beverage for $6 on an airline trip that was charged to Rider EDA. While the amount was miniscule Mr. Tolsdorf testified that it is not reasonable for ratepayers to pay for alcoholic beverages for ComEd employees. (Staff Ex. 1.0, pp. 7-8) Mr. Tolsdorf requested the Company address the issue in its rebuttal testimony and to respond whether the charge to Rider EDA for $6 was an oversight or if not an oversight the rationale for Company policy to allow recovery from ratepayers for such an expense. (Id., p. 8) In its rebuttal testimony, the Company in order to narrow the issues indicated it would remove the cost of the alcoholic beverage from the costs recovered through Rider EDA. (ComEd Ex. 3.0, p. 6)

3. Commission Analysis and Conclusions

The Commission approves the agreement reached between ComEd and Staff with respect to this issue.

IV. Contested Issue

A. Incentive Compensation

1. ComEd's Position

Staff witness Mr. Tolsdorf recommended that the Commission deny ComEd's incentive compensation expense that is related to the incremental employees hired by ComEd to implement its energy efficiency portfolio and whose costs were recovered through Rider EDA. Specifically, Mr. Tolsdorf requested that the Commission disallow $262,929.

According to ComEd, all eligible ComEd employees participate in the ComEd Annual Incentive Program ("AIP"). ComEd IBat 8. The 2010 AIP plan provides that "[t]his program is designed to reasonably insure that customers receive the benefits of reduced expenses and greater efficiencies in operations by putting a portion of employees' compensation at risk." ComEd IBat 8; Staff Cross Ex. 2 at 2. ComEd explained that, as the name of the program indicates, these benefits are intended to be effected by putting a portion of the employee's expected total compensation at risk: "It serves as an important part of your overall compensation package by linking individual and Company performance. The final amount of your award will be based on how well you, the group that shares your key performance indicators and the Company as a whole perform against the goals set for the year." *Id.*

ComEd witness Mr. Fruehe testified that, as employees of ComEd, the incremental employees hired to implement ComEd's energy efficiency programs participate in the AIP along with all other ComEd employees. ComEd IBat 8; ComEd Ex. 4.0 at 3. ComEd noted that there is no dispute that these incremental employees are employees of ComEd and work in a department of ComEd (the Energy Efficiency Department). ComEd IBat 8; Tr. at 39-40. ComEd asserted that as a result, incremental EE employees are subject to individual goals under the AIP (which are directly related to achieving ComEd's overall energy efficiency goals), and the degree to which each of these employees achieves his or her goals will determine the amount of compensation under the AIP, which could range from $0 to the full amount. ComEd IBat 8-9; Staff Cross Ex. 2; ComEd Ex. 4.0 at 6.

With respect to the legal standard to be applied by the Commission in reviewing this issue, ComEd noted that Staff's testimony reflects considerable confusion regarding the standard by which ComEd's incentive compensation should be reviewed by the Commission. ComEd IBat 9. ComEd explained that initially, Staff claimed in its direct testimony that ComEd had failed to satisfy the Commission's order in ICC Docket No. 10-0570, which approved ComEd's second energy efficiency plan for 2011-2013 (Plan Year 4 through Plan Year 6). There the Commission directed in its December 2010 order that "in ComEd's *next reconciliation filing* it should show how its current incentive compensation relates to EE or how it has tailored its incentive compensation for these employees." *Id*. at 9; *Commonwealth Edison Co.*, ICC Docket No. 10-0570, Final Order (Dec. 21, 2010), at 44 (emphasis added). According to ComEd, when it explained in rebuttal testimony that its "next reconciliation filing" was its August 2011 reconciliation filing for Plan Year 3, Staff largely backed away from its argument regarding the application of this order to the present docket. ComEd IBat 9. Indeed, ComEd noted that Staff witness Mr. Tolsdorf conceded during the evidentiary hearing that the Commission's reference to the "next reconciliation filing" was not a reference to the present Plan Year 2 reconciliation filing that was filed four months earlier in August 2010. *Id*. at 9-10; Tr. at 43.

ComEd observed that only in Mr. Tolsdorf's rebuttal testimony did he cite to the correct standards by which incentive compensation costs are to be reviewed and recovered. ComEd IBat 10. ComEd asserted that along with other costs ComEd proposes to recover in this docket, the incentive compensation costs must be prudently incurred and reasonable in amount. ComEd also observed that Mr. Tolsdorf's rebuttal testimony noted that the Commission recently reaffirmed in ComEd's 2010 rate case order its "long standing policy of allowing Incentive Compensation costs when those costs benefit ratepayers…." *Id*. at 10; Staff Ex. 3.0 at 4 (quoting *Commonwealth Edison Co.*, ICC Docket No. 10-0467, Final Order (May 24, 2011) at 65). ComEd noted that incentive compensation costs must not be tied to net income or earnings per share metrics that primarily benefit shareholders. *See e.g. Commonwealth Edison Co.*, ICC Docket No. 07-0566, Final Order (Sept. 10, 2008) at 61. According to ComEd, Staff has already concluded that the AIP benefits customers, and these benefits are only further underscored here where the incremental EE employees provided direct benefits to customers during Plan Year 2 in the form of delivering energy savings far above the statutory minimum at a cost that was nearly $16 million below budget. ComEd IBat 10. ComEd asserted that Staff has not challenged these benefits or otherwise contested the prudence or reasonableness of the incentive compensation costs, and it is uncontested that the AIP plans do not contain financial goals such as net income or earnings per share. *Id*.

With respect to the customer benefits associated with the AIP, ComEd explained that the Plan Year 2 incentive compensation costs provided verified and substantial benefits to customers and are prudently incurred and reasonable in amount. ComEd observed that because Plan Year 2 straddles two calendar years (2009 and 2010), incentive compensation costs were governed by two separate AIP plans (the 2009 AIP and the 2010 AIP). ComEd IBat 11; Staff Cross Exs. 1 and 2. ComEd submitted that the Commission expressly noted in its 2010 rate case order that Staff "reviewed the AIP Program, and concluded that the program, in fact, benefits ratepayers." *Commonwealth Edison Co.*, ICC Docket No. 10-0467, Final Order (May 24, 2011) at 65. ComEd further noted that consistent with the Commission's conclusion in the 2010 rate case, ComEd fully recovered the incentive compensation costs it incurred in Plan Year 1 related to the incremental EE employees. ComEd IBat 11; *Commonwealth Edison Co*., ICC Docket No. 09-0378, Final Order (Oct. 6, 2010) at 12.

Against this backdrop, ComEd stated that there was no basis upon which Staff could now claim that these same AIP plans do not benefit customers. ComEd IBat 11. In fact, according to ComEd, some of the most pronounced and verifiable customer benefits are delivered to customers through energy efficiency programs. *Id*. ComEd asserted that the incremental EE employees ComEd has hired to implement its Plan (and whose costs are recovered through Rider EDA) provide the benefits identified by the General Assembly in Section 8-103 of the Act:

> Requiring investment in cost-effective energy efficiency and demand-response measures will reduce direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure.

220 ILCS 5/8-103(a).

ComEd argued that these savings, as well as the energy savings achieved under subsection (b) of Section 8-103 of the Act, are effected in part by the employees who implement the energy efficiency plan, and who are compensated to do so. ComEd IBat 11. ComEd further explained that the Commission has now confirmed in ICC Docket No. 10-0520 that ComEd exceeded the Plan Year 2 energy savings goal, and was permitted to apply to Plan Year 3 approximately 40,000 MWhs of that additional energy savings. *Commonwealth Edison Co.*, ICC Docket No. 10-0520, Final Order (May 16, 2012) at 6. ComEd submitted that these significant savings were achieved at a cost $16 million below budget. ComEd IBat 12; ComEd Ex. 2.0 at 2. According to ComEd, Staff neither addressed nor disputed these benefits. ComEd IBat 12.

ComEd asserted that because there can be no dispute regarding customer benefits delivered by incremental EE employees, Staff attempted to belittle the importance of these employees' contributions (and the benefits they deliver) by claiming that they should not receive "extra" compensation simply for doing their job. ComEd IBat 12; Staff Ex. 3.0 at 6-7. ComEd stated that Staff's argument is wrong for two reasons. First, ComEd explained that incentive compensation is not "extra" compensation. ComEd IBat 12. ComEd witness Mr. Fruehe testified that incentive compensation is "a part of the employee's total compensation package. The AIP, similar to paid vacation and certain health care benefits, is a standard component of compensation offered to all ComEd employees, and is necessary for ComEd to remain competitive in the labor market with other utilities to attract qualified employees." ComEd IBat 12; ComEd Ex. 6.0 at 7. ComEd witness Mr. Fruehe further explained that the 2009 AIP itself expressly states that incentive compensation is "an important part of [the] overall compensation package." Staff Cross Ex. 1 at 2. Therefore, this compensation is not "extra" or a bonus, but rather a part of the employee's total compensation that is "at risk." ComEd Ex. 6.0 at 7. Second, ComEd asserted that the evidentiary record flatly contradicts Staff's attempt to undermine the incremental EE employees' efforts by characterizing them as "the bare minimum of what is acceptable."

ComEd IBat 13; Staff Ex. 3.0 at 7. ComEd submitted that these incremental EE employees contributed toward the remarkable cost containment efforts that resulted in a savings of nearly $16 million to customers during Plan Year 2. ComEd IBat 13. ComEd further noted that these savings were achieved while also exceeding the energy savings goals for Plan Year 2, which resulted in additional savings and benefits to customers. *Id*.

ComEd also explained that the AIP itself ensures that only those employees whose performance contributed to ComEd's success receive compensation under the AIP. *Id*. According to ComEd, Mr. Fruehe highlighted the portions of the AIP ignored by Staff that clearly state that those employees who fail to meet expectations receive no compensation under the AIP. ComEd IBat 13-14; Tr. at 28-31. The AIP explains the effect of individual performance as follows:

- The annual performance review process determines your individual performance multiplier ("IPM") based on your individual performance and personal contribution to your team during the year. The IPM can range from 50 percent to 120 percent or zero percent, relative to your annual performance rating on a five-point rating scale (A, B+, B, B-, C).

- Your total AIP award, after application of ComEd Funding KPIs, individual multipliers and all other adjustments, can range from zero to 200 percent of your individual target incentive opportunity.

- You will not receive an award if your year-end performance rating is "does not meet expectations" (or its equivalent), or you are placed on but do not successfully complete a performance improvement plan by year end.

ComEd IBat 13-14; Staff Cross Ex. 2 at 6 (omitting footnote noting that the top of the IPM range is limited to 110% for certain officers).

ComEd further contended that even though the Commission's order in ICC Docket 10-0570 plainly stated that it applies to ComEd's "next reconciliation filing" (*i.e.*, its August 2011 Plan Year 3 filing), ComEd's incentive compensation costs already satisfy the showing articulated by the Commission in that docket. ComEd IBat 14; *Commonwealth Edison Co.*, ICC Docket No. 10-0570, Final Order (Dec. 21, 2010) at 44 ("[I]n ComEd's next reconciliation filing it should show how its current incentive compensation relates to EE <u>or</u> how it has tailored its incentive compensation for these employees." (emphasis added)). ComEd stated that while the Commission will only require ComEd to make one of these showings, its incentive compensation program both relates to energy efficiency and is tailored to EE employees. ComEd IBat 14.

ComEd argued that inherent in the AIP is the requirement that employees are evaluated based on their achievement of specific, individual goals during the year that relate to their particular department within ComEd. *Id*. Therefore, the AIP structure ensures that incentive compensation relates to energy efficiency and is tailored to EE employees. *Id*. ComEd witness Mr. Fruehe testified that EE employees' goals "are directly related to achieving ComEd's overall energy efficiency goals." ComEd Ex. 6.0 at 6. ComEd further explained that employees are also evaluated based on their personal contribution to their team during the year. ComEd IBat 15; Staff Cross Ex. 2 at 6; *see also id*. at 2 ("The final amount of your award will be based on how well you, the group that shares your key performance indicators and the Company as a whole perform against goals set for the year."). Thus, according to ComEd, the amount of incentive compensation an incremental EE employee receives directly relates to energy efficiency and is tailored to the employee because such compensation depends on how well the employee performed in achieving energy efficiency goals and contributing to the success of the Energy Efficiency Department during the year. ComEd IBat 15. Additionally, ComEd further noted that Staff witness Mr. Tolsdorf admitted that he never addressed this relationship during cross examination. Tr. at 50-51.

ComEd further asserted that the tailoring of AIP to the incremental EE employees is accomplished in part through the Individual Performance Multiplier ("IPM"), which is based upon an employee's "individual performance and personal contribution to [his or her] team during the year. The IPM can range from 50 percent to 120 percent or zero percent, relative to your annual performance rating on a five-point rating scale ….". ComEd IBat 15; Staff Cross Ex. 2 at 6. According to ComEd, this is important because an employee will not receive an award if his or her year-end performance rating "does not meet expectations" or if the employee "did not successfully complete a performance improvement plan by year end." Staff Cross Ex. 2 at 6; ComEd IBat 15. When applying the IPM to the incremental EE employees, ComEd explained that they are evaluated based on their individual performance as an energy efficiency employee and their contribution to the Energy Efficiency department. ComEd Init Br. at 15. ComEd further noted that based on these specific energy efficiency-related criteria, the incremental EE employees may receive a portion of their total compensation through AIP if their performance rating qualifies for such compensation. *Id*. Therefore, according to ComEd, if the incremental EE employees do not achieve their EE-related goals, they will not be able to participate in the AIP and will receive less than their total expected compensation. *Id*. at 15-16. ComEd noted that Mr. Tolsdorf testified during his cross-examination that he did not address the IPM anywhere in his direct or rebuttal testimony. Tr. at 50-51.

Finally, ComEd stated that beginning with the 2010 AIP, ComEd added a Key Performance Indicator ("KPI") called the Focused Initiatives & Environmental Index, which includes a measure of energy efficiency savings programs offered pursuant to Section 8-103 of the Act. ComEd IBat 16; Staff Cross Ex. 2 at 4, 8. According to ComEd, the incremental EE employees are vital and necessary to achieving energy savings under Section 8-103, and their performance is directly tied to achievement of the KPI described above. ComEd IBat 16; ComEd Ex. 6.0 at 5. ComEd observed that Mr. Tolsdorf failed to address the addition of this KPI in his direct testimony, and only acknowledged it in his rebuttal testimony in response to ComEd witness Mr. Fruehe. ComEd IBat 16; Tr. at 48. ComEd concluded that Staff's recommendation should therefore be rejected by the Commission.

2. Staff's Position

The only contested issue in this proceeding that Staff is aware of is the Company's insistence on seeking the recovery of incentive compensation costs paid under its Annual Incentive Plan ("AIP") to incremental EE employees from rate payers through its Rider EDA. That issue comes down to the following two questions. Do incentive compensation costs for incremental EE employees have to be related to activities and programs approved in the Company's energy efficiency Plan and (2) Do those costs have to provide a benefit to ratepayers? It is Staff's position that the answer to both questions is yes. Yes, incentive compensation costs have to be related to activities and programs approved in the Company's energy efficiency Plan and yes, those costs have to provide a benefit to ratepayers.

Staff argued in its initial brief that under Rider EDA, ComEd is only allowed to recover incremental costs that are incurred by ComEd in association with Energy Efficiency and Demand Response Measures. (Commonwealth Edison Company, Rider EDA, 1st Revised Sheet No. 245) Energy Efficiency and Demand Response Measures under the rider means "activities and programs that are developed, implemented, or administered by or for the Company, or the Department of Commerce and Economic Opportunity (DCEO), *that are related to energy efficiency and demand response plans approved by the ICC*." (Id.) (Emphasis added) Mr. Tolsdorf took issue with the Company's recovery of AIP incentive compensation costs for incremental employees because the Company failed to show that the AIP costs related to energy efficiency measures. (Staff Ex. 1.0, p. 4) Staff witness Tolsdorf testified that the Company had provided no justification as to why the Company should recover for its incremental energy efficiency employees, those employees' AIP incentive compensation. (Id.) Mr. Tolsdorf explained that AIP uses metrics like frequency and duration of outages and there is no correlation between the duration of an outage and the number of CFLs installed during the program year or *any other EE measure*. (Id.) Accordingly, Mr. Tolsdorf made an adjustment for the AIP incentive costs. Also, as further explained in Mr. Tolsdorf's rebuttal testimony, in order for the AIP incentive compensation costs to be recovered from ratepayers ComEd needed to show that AIP provided a benefit to customers in terms of the energy efficiency programs. Because AIP is not tailored to energy efficiency measures recoverable under Rider EDA (Staff Ex. 1.0, p. 5), it was no surprise to Staff that ComEd was unable to show the necessary customer benefits to ratepayers due to AIP.

Staff further argued in its initial brief that It should also have been no surprise to ComEd that a showing of benefit to ratepayers due to AIP is the condition upon which incentive compensation cost recovery depends as that standard has been used by the Commission for years with respect to incentive compensation. Staff explained that the customer benefit standard has been applied by the Commission to ComEd at least as far back as ComEd's 2001 rate case, Docket No. 01-0423. In fact the Appellate Court noted the past Commission precedent on the issue of incentive compensation cost recovery and applied the same standard in the appeal of ComEd's 2005 rate case where the Appellate Court stated "there is ample precedent making a benefit to ratepayers a condition upon which the recovery of salary-related expense depends."

(Commonwealth Edison Company v. Illinois Commerce Commission, 398 Ill. App. 3d, 510, 517 (2009)) The customer benefit standard was used most recently in ComEd's recent rate case, Docket No. 10-0467 ("The Commission has a long-standing policy of allowing Incentive Compensation costs when those costs benefit ratepayers …" (Order, May 24, 2011, Docket No. 10-0467, p. 65). And, the Commission applied the same customer benefit standard in ComEd's 2007 rate case, Docket No. 07-0566. ("The utility can recover its expenses when it can prove that the expenses are reasonable, related to utility service, *and of benefit to ratepayers or utility service*." (Order, September 10, 2008, Docket No. 07-0566, p. 61) (Emphasis added) Finally, Staff further argued that in the Commission's original order for ComEd's 2005 rate case, Docket No. 05-0597, the same customer benefit standard was applied by the Commission. In that order, the Commission directly addressed the standard for incentive compensation costs to be recovered. The Commission stated that:

> All parties appear to agree on the standards the Commission should employ when deciding whether to allow a company to recover the cost of its incentive compensation program. In ComEd's previous rate case, Docket 01-0423, we stated that such expenses should be recovered if the incentive compensation plan has 'reduced expenses and created greater efficiencies in operations' and thus, it 'can reasonably be expected to provide net benefits to ratepayers.

(Original Order, July 26, 2006, Docket No. 05-0597, p. 95)

Staff argued in its initial brief that there is a long line of Commission orders requiring ComEd to show a customer benefit for incentive compensation pay in order for that pay to be recovered from ratepayers. While ComEd seems to have taken the position that it has been allowed 100% of its AIP costs in Docket No.10-0467 and therefore cost recovery is appropriate in this proceeding (ComEd Ex. 6.0, p. 3) ComEd is only allowed to recover through Rider EDA incremental energy efficiency costs (i.e., costs related to approved ComEd energy and efficiency and demand response activities and programs) (Rider EDA, 1st Revised Sheet No. 246), and the customer benefit required to be shown in this proceeding must be related to the *incremental* energy efficiency employees' efforts not the efforts of other ComEd employees.

Staff witness Tolsdorf first brought up the issue of customer benefit when he pointed out that the Company had failed to show how the incentive cost it sought to recover related to energy efficiency or how the AIP had been tailored for ComEd's EE employees. (Staff Ex. 1.0, p. 3) Mr. Tolsdorf addressed the AIP plan again in his rebuttal testimony when he pointed out that Company witness Mr. Fruehe failed to consider in his testimony that incentive compensation costs are only allowed recovery when a Company shows that a customer benefit has occurred. Under ComEd's AIP plan, the incentive compensation paid is barely related to ComEd's incremental EE employees' efforts. Under the Company's AIP plan the base amount of incentive compensation paid to employees subject to the AIP Plan is the result of goal weights and KPI Performance pay out percentages. The product of these percentages results in a Preliminary weighted pay out percentage. The weighted pay out percentage is then applied to an eligible salary amount. Eighty-five percent of the goal weights in the AIP Plan relate to ComEd's: (1) O&M expense, (2) capital expenditures, (3) SAIFI, (4) CAIDI, OSHA recordable rate, and (5) and customer satisfaction. None of those goal weights relate to energy efficiency let alone energy efficiency activities and programs approved in ComEd's plan. The other fifteen percent is related to Focused Initiatives and Environmental Index. (Staff Cross Ex. 2.0, p. 1) However, for 2009 none of the Focused Initiatives and Environmental Index related to energy efficiency (Tr., May 10, 2012, p. 15) and for 2010 only 2 of the 13 Focused Initiatives and Environmental Index related to energy efficiency. (Id., p. 18) The significance of which was addressed by Mr. Tolsdorf when he testified on redirect, that for the 2010 AIP Plan the impact of energy efficiency performance on incentive compensation is at most 2% of the total incentive compensation paid. (Id., p. 58; Staff Cross Ex. 2, p. 10) Stated another way, ninety-eight percent of incentive compensation paid to incremental energy efficiency employees has nothing to do with energy efficiency. (Id.) As a result, the efforts of the incremental EE employees have very little to do with the incentive compensation which the Company seeks to recover from ratepayers through Rider EDA. This is further buttressed by the testimony of Company witness Fruehe who admitted on cross examination that EE employees do not do Underground Cable Program work, Substation Transformer Maintenance Work and Vegetation Management for Distribution and Transmission work, which compose some of the other eleven Focused Initiatives and Environmental Index upon which incentive compensation is based. (Tr., May 10, 2012, pp. 17-18) Because AIP is not tailored to energy efficiency and demand response measures approved in ComEd's Energy Efficiency Plan that are ultimately implemented by ComEd for which ComEd seeks cost recovery through Rider EDA, ComEd is unable to meet the customer benefit standard set forth in past Commission orders that go at least as far back as 2003.

Finally, Staff noted that this is the first time the issue of AIP cost recovery has been brought to the Commission's attention by Staff in a ComEd Rider EDA reconciliation proceeding. (Tr., May 10, 2012, p. 54) Therefore, any argument that AIP incentive compensation costs may have been previously recovered from ratepayers through ComEd's Rider EDA is not a valid reason for the recovery of the AIP costs in this reconciliation proceeding as the Company suggests. (ComEd Ex. 6.0, p. 3) As set forth above, allowance of these costs through Rider EDA would be contrary to several prior Commission orders regarding ComEd rates with respect to incentive compensation cost recovery in general.

a) Final Reconciliation

Rider EDA requires an annual reconciliation of the revenues accrued through the application of the applicable EDA charge with the incremental costs incurred for the reconciliation period. Staff attached to its initial brief Appendix A (ICC Staff Ex. 3.0, Schedule 3.1) which provides a reconciliation beginning with the Company's proposed revenues and expenses, Staff's adjustment for incentive compensation costs, and the resulting revenues and expenses proposed by Staff. Staff's adjustment results in a Program Year 2 Ordered Reconciliation Factor of $262,929 to be refunded in ComEd's first Rider EDA filing following the Final Order in this docket and should be approved by the Commission.

3. Commission Analysis and Conclusion

Staff proposes to disallow all of ComEd's incentive compensation expense that is related to the incremental employees hired by ComEd to implement its energy efficiency ("EE") portfolio and whose costs are recovered through Rider EDA. The Commission adopts Staff's proposal.

This Commission has long required a showing of benefit to ratepayers due to AIP to recover incentive compensation cost. In this Docket, the Company had failed to show how the incentive cost it sought to recover relate to energy efficiency or how the AIP had been tailored for ComEd's EE employees.

Under ComEd's AIP plan as noted by Staff, the incentive compensation paid is barely related to ComEd's incremental EE employees' efforts. Under the Company's AIP plan the base amount of incentive compensation paid to employees subject to the AIP Plan is the result of goal weights and KPI Performance pay out percentages. Eighty-five percent of the goal weights in the AIP Plan relate to ComEd's: (1) O&M expense, (2) capital expenditures, (3) SAIFI, (4) CAIDI, OSHA recordable rate, and (5) and customer satisfaction. None of those goal weights relate to energy efficiency let alone energy efficiency activities and programs approved in ComEd's plan. The other fifteen percent is related to Focused Initiatives and Environmental Index.

The record shows that for 2009 none of the Focused Initiatives and Environmental Index related to energy efficiency. For 2010 only 2 of the 13 Focused Initiatives and Environmental Index related to energy efficiency. Further, the record demonstrates that for the 2010 AIP Plan, the impact of energy efficiency performance on incentive compensation is at most 2% of the total incentive compensation paid. (Id., p. 58; Staff Cross Ex. 2, p. 10) Stated another way, ninety-eight percent of incentive compensation paid to incremental energy efficiency employees has nothing to do with energy efficiency. (Id.)

As a result, the efforts of the incremental EE employees have very little to do with the incentive compensation which the Company seeks to recover from ratepayers through Rider EDA. This is further buttressed by the testimony of Company witness Fruehe who admitted on cross examination that EE employees do not do Underground Cable Program work, Substation Transformer Maintenance Work and Vegetation Management for Distribution and Transmission work, which compose some of the other eleven Focused Initiatives and Environmental Index upon which incentive compensation is based. (Tr., May 10, 2012, pp. 17-18) Because AIP is not tailored to energy efficiency and demand response measures approved in ComEd's Energy Efficiency Plan that are ultimately implemented by ComEd for which ComEd seeks cost recovery through Rider EDA, ComEd is unable to meet the customer benefit standard set forth in past Commission orders.

This docket is the first time the issue of AIP cost recovery has been brought to the Commission's attention by Staff in a ComEd Rider EDA reconciliation proceeding. Therefore, the argument that AIP incentive compensation costs may have been previously recovered from ratepayers through ComEd's Rider EDA is not a valid reason for the recovery of the AIP costs in this reconciliation proceeding. The allowance of these costs through Rider EDA would be contrary to several prior Commission orders regarding ComEd rates with respect to incentive compensation cost recovery in general. Similarly, the argument that the Commission directive in Docket 10-0570 that ComEd show in its next reconciliation how its incentive compensation relates to energy efficiency exempts Comed from that requirement in this Docket is misplaced.

V. The Commission therefore adopts Staff's recommendation to disallow the recovery of ComEd's Plan Year 2 incentive compensation costs recovered through Rider EDA.

VI. Findings and Orderings Paragraphs

The Commission, having given due consideration to the entire record and being fully advised in the premises, is of the opinion and finds that:

(1) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, sale and distribution of electricity to the public in Illinois, and is a public utility as defined in Section 3-105 of the Public Utilities Act;

(2) the Commission has jurisdiction over Commonwealth Edison Company and the subject matter of this proceeding;

(3) the statements of fact set forth in the prefatory portion of this Order are supported by the evidence and the record and are hereby adopted as findings of fact;

(4) for the period June 1, 2009 through May 31, 2010, ComEd prudently incurred Rider EDA program expenditures of $63,280,545.

(5) for the period June 1, 2009 through May 31, 2010, ComEd recovered $70,546,051 from ratepayers in accordance with the terms of Rider EDA, resulting in an over-recovered amount, or ARF, of $11,168,523 after taking into account the cumulative over-recovery from the prior reconciliation periods, as reflected in Appendix A attached hereto; and

(6) Commonwealth Edison Company shall file the evaluation and quarterly reports as described in this Order.

IT IS THEREFORE ORDERED that the reconciliation submitted by Commonwealth Edison Company of the energy efficiency and demand response measures and associated costs actually incurred with the revenues received under

Rider EDA covering the period beginning June 1, 2009 and ending May 31, 2010, inclusive of the parties' agreed-to adjustments as detailed herein, is hereby approved.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Illinois Administrative Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED:	June 15, 2012
BRIEFS ON EXCEPTIONS DUE:	June 29, 2012
REPLY BRIEFS ON EXCEPTIONS DUE:	July 6, 2012

Terrance Hilliard
Administrative Law Judge